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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/580,310 05/26/00 YATCHAK

S 17297-001700

020350 PM82/1107  
TOWNSEND AND TOWNSEND AND CREW  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO CA 94111-3834

EXAMINER

FISHER, M

ART UNIT

PAPER NUMBER

3636

DATE MAILED:

11/07/01

3

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/580,310

Applicant(s)

YATCHAK ET AL.

Examiner

Michael J Fisher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to invention 1, classified in class 108, subclass 140.4.
- II. Claims 17-24, drawn to invention 2, classified in class 248, subclass 222.14.

The inventions are distinct, each from the other because of the following reasons:

Inventions 1 and 2 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all of the limitations of invention 2 are not necessary for invention 1. The subcombination has separate utility such as a bracket for another device.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Darin Gibby on 10/30/01 a provisional election was made without traverse to prosecute the invention of 1, claims 1-16.

Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 17-24 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to how an aperture can be keyed to prevent rotation as an aperture is a void devoid of substance by definition. Therefore, an aperture cannot have any features as it is in essence a hole.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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Claims 1,2,6-8,10,16 and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by McGrath.

McGrath discloses a sneeze guard (fig 1) with a clear panel (16) connected to a pair of adjustable brackets (20,22 make up each bracket and are shown to be connected to each side in fig 1) coupled to a post (46) which is coupled to a base (12 via connector 18). McGrath further discloses a housing about the post (48) with an arm (56) coupled to the housing (fig 2) via a connector (64). The panel is connected to the arm via a coupling mechanism (56). The arm includes an aperture (through which screw members 68 pass, col 4, line 5). McGrath further discloses a cap (top piece 66) and a screw (68) insertable into the aperture which arrangement couples the panel to the arm. McGrath further teaches a plurality of teeth on the housing and on the arm (fig 13) which interlock and further comprising a screw (64) to pivotally couple the arm to the housing. Further, McGrath discloses the method of claims 21,22 and 23.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath.

McGrath discloses a sneeze guard assembly as discussed above. McGrath does not, however, teach a stabilizer attached to the base. It would have been obvious to one of ordinary skill in the art to have a stabilizer on the base to keep it stable.

Claims 3-5 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath as applied to claims 1,2,6-8,10,16 and 21-23 above, and further in view of O'Brien.

McGrath discloses a sneeze guard assembly as discussed above. McGrath does not, however, teach an insert within the housing.

O'Brien teaches a bracket (14) which couples a panel (22) to an arm (10). O'Brien further teaches an insert (pieces 20) within the housing (14). O'Brien further discloses a locking bar (21) which is disposed between the housing and the insert (fig 3) and which locking bar is a screw (fig 3). The housing has a cylindrical section (fig 3). The insert comprises a hollow sleeve, which is not tubular, but it is round on the outside with a hollow section, with an elongate slot (inside of sections 20). When the locking bar is forced against the sleeve, it constricts.

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It would have been obvious to one of ordinary skill in the art to modify the structure as disclosed by McGrath with the locking mechanism as taught by O'Brien to avoid damaging the post. It further would have been obvious to make the interior opening of the inserts round, and thus to provide a true tubular cross section, to more snugly fit about the post thus further teaching the method of claim 24.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath as applied to claims 1,2,6-8,10,16 and 21-23 above, and further in view of Goldsmith.

McGrath discloses a sneeze guard apparatus as discussed above. McGrath further discloses that the placement of the posts on the base could be moved (figs 4-6 and 10). McGrath does not, however, teach a method of doing this.

Goldsmith teaches an assembly (fig 2) with a hole for a post (44) and a plug (56) which covers the hole when not in use.

It would have been obvious to one of ordinary skill in the art to modify the base as disclosed by McGrath with a plurality of devices as taught by Goldsmith to allow for greater versatility for the sneeze guard apparatus and further because the cap would prevent food from getting into the holes and creating a health hazard.

#### ***Allowable Subject Matter***

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose a second bracket assembly coupled to the post and further does not disclose a second arm coupled to the post with a second panel connected. While such modifications are known, it would destroy the reference to add another bracket assembly or an arm to the post, as it would take a reworking of the details of the bracket, housing post and arms.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US PAT 5,974,984 to Mitjans, US PAT 6,093,878 to Hoshino.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Fisher whose telephone number is 703-306-5993. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

MF   
November 3, 2001

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600